

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DAVID M. JAA,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

3: 10-cv-00139-RCJ-RAM

**ORDER**

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 (#1-2). The Court has screened Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A and finds that it must be dismissed.

**I. Screening Pursuant to 28 U.S.C. § 1915A**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged

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1 violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42,  
2 48 (1988).

3 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation  
4 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of  
5 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may  
6 be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.  
7 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is  
8 provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under  
9 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses  
10 a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions  
11 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could  
12 not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*  
14 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim  
15 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that  
16 would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making  
17 this determination, the Court takes as true all allegations of material fact stated in the complaint, and the  
18 Court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d  
19 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less stringent standards than  
20 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404  
21 U.S. 519, 520 (1972) (per curiam). While the standard under Rule 12(b)(6) does not require detailed  
22 factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp.*  
23 *v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic recitation of the elements of a cause of action  
24 is insufficient. *Id.*, see *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

25 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the  
26 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal

1 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims of  
 2 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual  
 3 allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28  
 4 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

### 5 **III. Screening of the Complaint**

#### 6 **A. Defendants**

7 The Civil Rights Act under which this action was filed provides:

8 Every person who, under color of [state law] . . . subjects, or causes to  
 9 be subjected, any citizen of the United States. . . to the deprivation of any  
 10 rights, privileges, or immunities secured by the Constitution. . . shall be  
 liable to the party injured in an action at law, suit in equity, or other  
 proper proceeding for redress. 42 U.S.C. § 1983.

11 The statute plainly requires that there be an actual connection or link between the actions of the  
 12 defendants and the deprivation alleged to have been suffered by plaintiff. *See Monell v. Department*  
 13 *of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit has  
 14 held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning  
 15 of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to  
 16 perform an act which he is legally required to do that causes the deprivation of which complaint is  
 17 made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

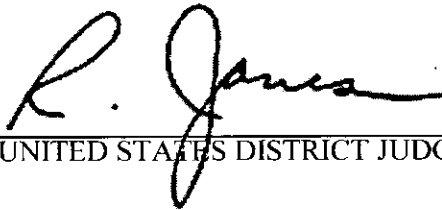
18 The sole defendant named in this action is the State of Nevada. The Eleventh Amendment  
 19 prohibits federal courts from hearing suits brought against an unconsenting state. *Brooks v. Sulphur*  
 20 *Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991)(citation omitted); *see also Seminole Tribe*  
 21 *of Fla. v. Florida*, 116 S.Ct. 1114, 1122 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy,*  
 22 *Inc.*, 506 U.S. 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991).  
 23 Nevada explicitly has retained its full eleventh amendment immunity. Nev.Rev.Stat. 41.031(3). The  
 24 court therefore finds that the sole defendant in this action, the State of Nevada, is immune from suit.

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1           **IT IS THEREFORE ORDERED** that this action is **DISMISSED** without prejudice for failure  
2 to identify a proper defendant. The Clerk of the Court shall enter judgment accordingly.

3           DATED this 20<sup>th</sup> day of October, 2010.

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7           UNITED STATES DISTRICT JUDGE  
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